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June 2, 2010

BY ECF

The Honorable Gary L. Sharpe
United States District Judge
Northern District of New York
James T. Foley Courthouse
445 Broadway
Albany, NY 12207

Re: Curns and Zukaitis v. Wal-Mart Stores, Inc. (06-CV-1336 (GLS/DLH))

Dear Judge Sharpe:

As counsel to the defendant Walmart Stores, Inc. ("Walmart") in the above-referenced action, we write in connection with the email notification that we received yesterday afternoon from your Honor's Courtroom Deputy, John Law. For the reasons set forth herein, we respectfully request that the Court keep the trial commencement date of June 14, 2010 instead of changing it to next Monday, June 7, 2010.

First, pursuant to the Court's order of May 20, 2010, we understood that the trial had been set for a date certain on June 14, 2010, starting at 9:30 a.m., except that the case could be further adjourned if the *Perez* trial was not completed by our newly scheduled pretrial date of June 9, 2010. Indeed, we called your chambers and spoke with Mr. Law to confirm our interpretation that there was a new and case specific trial date set for June 14. Thereafter, in accordance with the order, we advised the Walmart witnesses, most of whom had to make travel arrangements to attend the trial, to make arrangements to be available in Albany for trial during the week of June 14th.

Second, as disclosed in my letter to the Court of May 12, 2010 and enclosures, Scott Forman, Walmart's lead trial counsel, has a final pretrial conference in Brentwood, New Hampshire next Thursday, June 10, 2010. Thus, Mr. Forman will be unavailable to attend the trial in this case on June 10. In addition, even if the Court were inclined to adjourn this trial for that one day, given the 207 miles between the trial in Albany and the conference in New Hampshire, Mr. Forman would be unable to work on this case for the travel periods surrounding the conference. It would be less of a disruption to the trial and more manageable if we proceed on June 14.

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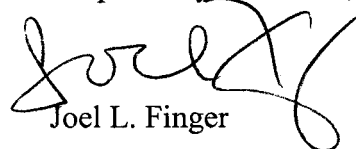
Third, Mr. Forman had a family medical emergency last week which precluded him from devoting any time to preparing for this trial. Specifically, Mr. Forman's brother-in-law (his wife's brother) had an emergency heart transplant on May 24, 2010. A number of emergency, life-critical follow up surgeries were required over the course of the following days. Consequently, Mr. Forman was unable to resume working on this case until yesterday, resulting in the cancellation of trial witness preparation scheduled for last week.

Finally, given the limited amount of time prior to next Monday, starting the trial a week earlier presents significant logistical issues. For example, pursuant to the Court's memo endorsed order of May 21, 2010, the parties are still taking trial preservation depositions of certain witnesses. Patti Allen's deposition was taken yesterday in Syracuse, New York and Randall Sims' deposition will proceed this Friday, June 4, 2010 in Manhattan. It will be very difficult to have the videotape depositions available to the Court for ruling on any objections and edited by Monday morning.

With respect to the letter from Plaintiffs' counsel, Andrew Goodstadt, that we just received, the Court has already permitted Walmart to take Mr. Sims' preservation deposition because he will not be available for trial. The circumstances that led the Court to permit that deposition have not changed. Mr. Sims' deposition was scheduled early last week before the parties received the notice from the Court yesterday afternoon. Cancelling the deposition because the Plaintiffs' counsel are also busy preparing for trial is not a valid basis for the Court to reconsider its previous ruling. The time pressure reflected in Mr. Goodstadt's letter only supports our request that the trial date remain at June 14.

For the foregoing reasons, Walmart respectfully requests that the Court keep the trial date in this matter as previously scheduled to commence on June 14, 2010. Thank you for your consideration of this request.

Respectfully submitted,



Joel L. Finger

cc: Andrew Goodstadt, Esq.